

**Plaintiffs' Memorandum in Opposition
to Joint Motion for Summary
Judgment for Failure to Prove Fault
Element of Public Nuisance Claims**

Ex 3 – Hartman Tr. Excerpts

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

4 IN RE: NATIONAL)
PRESCRIPTION) MDL No. 2804
5 OPIATE LITIGATION)
_____) Case No.
6) 1:17-MD-2804
THIS DOCUMENT RELATES)
7 TO ALL CASES) Hon. Dan A. Polster

8 - - -

9 THURSDAY, NOVEMBER 15, 2018
10 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

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12
13 Videotaped deposition of Mark Hartman,
14 held at the offices of BakerHostetler, 200 Civic
15 Center Drive, Suite 1200, Columbus, Ohio, commencing
16 at 9:06 a.m., on the above date, before Carol A. Kirk,
17 Registered Merit Reporter and Notary Public.

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21
22

23 GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
24 deps@golkow.com

1 A. Yeah.

2 Q. Okay. Did you do any consulting
3 for Cardinal from that point forward?

4 A. Never.

5 Q. Okay. And you worked for Cardinal
6 for over a decade; is that right?

7 A. Yes.

8 Q. Okay. Let's pull up P13900.

9 - - -

10 (Cardinal-Hartman Exhibit 1 marked.)

11 - - -

12 MR. FULLER: And, Steve, I'm just
13 going to hand you all the copies and let
14 you pass them out; is that okay?

15 MR. PYSER: Yeah, that's great.

16 Thank you.

17 MR. FULLER: Sure.

18 This will be marked Plaintiff's
19 Number 1 or -- yeah, however y'all label
20 them.

21 (Discussion held off the record.)

22 BY MR. FULLER:

23 Q. So, Mr. Hartman, sort of how this
24 is going to work, is you have a screen in front

1 of you. You'll see the document that I'm
2 referring to on the screen, and wherever I'm
3 flowing or we're flowing on the document will be
4 highlighted for you, as well as potentially
5 blown up. So you'll have the hard copy in front
6 of you as well as the screen to use. Okay?

7 A. Okay.

8 Q. All right. Have you seen this
9 e-mail before?

10 A. Yes.

11 Q. This is an e-mail that explains
12 back in December of 2007 you were taking
13 appointment as a senior vice president of Supply
14 Chain Integrity and regulatory operations for
15 HSCS; is that correct?

16 A. That's right.

17 Q. And what is HSCS, for the jury?
18 Healthcare Supply Chain Services?

19 A. Thank you.

20 Q. You're welcome.

21 A. I forgot the acronym.

22 Q. I understand. I understand.

23 And if you look down at the
24 announcement portion, and this was sent out, at

1 A. "We are pleased to announce the
2 appointment of Mark Hartman to the position of
3 Senior Vice President, Supply Chain Integrity
4 and Regulatory Operations for HSCS reporting to
5 both of us."

6 Q. And "both of us" indicates who?

7 A. And -- let's see.

8 Q. If you look at the front section.

9 A. So that's Jeff Henderson and
10 Gary Dolch.

11 Q. And who is Mr. Henderson; do you
12 know?

13 A. Yes. He's the -- he was the chief
14 financial officer at the time and the interim
15 CEO.

16 Q. And the CEO for Healthcare Supply
17 Chain Services, correct?

18 A. HS -- yeah, yes, that's correct.

19 Q. The acronym that we were
20 struggling with earlier?

21 A. Correct.

22 Q. And who is Mr. Dolch?

23 A. EVP quality and regulatory
24 affairs.

1 Q. And just for the jury, EVP is
2 what?

3 A. Executive vice president.

4 Q. Fair enough.

5 And then go on, if you will, and
6 read your portion where it describes your role,
7 what role you'll be filling for Cardinal.

8 A. "Mark will be responsible for
9 leading HSCS' initiative to build and operate
10 state of the art diversion prevention, supply
11 chain integrity and regulatory compliance
12 processes and systems."

13 Q. And you know when you were coming
14 into this role that the supply chain integrity
15 was lacking, correct?

16 A. In what way?

17 Q. It wasn't sufficient?

18 MR. PYSER: Object to form.

19 Q. Or do you disagree with that?

20 A. Yeah. I'm not sure it was not
21 sufficient.

22 Q. Let's continue. Read the next
23 sentence for us.

24 A. "This position is a critical role

1 for the company as supply chain integrity
2 continues to become an area of increased focus
3 by regulatory agencies and customers alike."

4 Q. And you're aware during this time
5 that this was an issue of focus, particularly
6 for the DEA?

7 A. I'd become aware of it as the role
8 was offered to me.

9 Q. Okay. You also became aware that
10 Cardinal had three facilities get their license
11 suspended for the lack of supply chain
12 integrity, correct?

13 MR. PYSER: Object to form.

14 A. As the role was offered to me,
15 that's when I became aware of what had happened.

16 Q. Okay. And that was that three
17 distribution centers, Lakeland, Swedesboro, and
18 Washington, had their license stripped from them
19 because of supply chain integrity issues. Is
20 that your understanding?

21 MR. PYSER: Object to form.

22 A. Their licenses were suspended, as
23 I came to understand.

24 Q. Did the DEA just come in and

1 suspend them for no reason?

2 What were the allegations, if you
3 know, Mr. Hartman?

4 A. I would need to review it, but I
5 believe it was due to the anti-diversion issues
6 that the company was facing with the DEA.

7 Q. And that's included in supply
8 chain integrity; isn't that right?

9 A. That's right.

10 Q. Okay. So it was the supply chain
11 integrity issues that caused the license to be
12 suspended. We can agree on that, correct?

13 A. Yes.

14 Q. Okay. Continue reading,
15 "Reporting to Mark ..."

16 A. "... will be Steve Reardon, Vice
17 President, Quality and Regulatory Affairs for
18 HSCS, and Michael Moné, Vice President of
19 Anti-Diversion."

20 Q. So if we're looking at the
21 hierarchy now, when you come into this
22 position -- and this is a new position for you,
23 correct?

24 A. Yes.

1 Q. No, sir. I asked if you had dug
2 down and looked at what was going on.

3 A. Certainly I looked at what was
4 going on, but ...

5 Q. Then tell the jury what was going
6 on at the three distribution centers that got
7 their licenses suspended.

8 A. Again, this was after -- this was
9 before my time of stepping into role, and I did
10 not have input or any involvement in the
11 regulatory affairs as I believe this happens.
12 So with what you put in front of me, this -- is
13 this the immediate suspension orders? What are
14 we looking at?

15 Q. Sir, this is the -- not only the
16 immediate suspension orders, but also the
17 settlement and release agreement that was
18 entered by your company, Cardinal, during the
19 time you were filling this role, during the time
20 that you were over the regulatory division.

21 MR. PYSER: Object to form.

22 Q. And these immediate suspension
23 orders that are attached, one is from November,
24 right before you got there. Two are from

1 December. Another one from January. And you
2 were there in January, right? You were in the
3 role?

4 A. That -- that was Houston, yes.

5 Q. And were you involved in the
6 decision by the Houston distribution center to
7 voluntarily give up its license and stop
8 shipping controlled substances? Because by the
9 time -- you're there in the driver's seat,
10 right?

11 A. Working on our anti-diversion
12 processes and practices. So that decision, I
13 might have been in the room to listen in. I
14 don't know that I was in any way -- that I -- I
15 certainly wasn't the one that made that decision
16 around Houston.

17 Q. Were you involved in that decision
18 around Houston?

19 A. I don't recall.

20 Q. Okay.

21 A. I mean, I recall certainly Houston
22 and the suspension. I'm sure I was in a meeting
23 or two, but ...

24 Q. And you know that ultimately they

1 voluntarily gave up --

2 A. I do know that.

3 Q. -- their license to deliver and
4 distribute controlled substances based on the
5 conduct that the government found going on
6 there, right?

7 MR. PYSER: Object to form.

8 Misstates evidence.

9 A. Yes.

10 Q. Okay. So let's turn to page 16,
11 and I'll tell you, Mr. Hartman, there may be
12 page numbers on the bottom, but if you look at
13 the upper left-hand -- or excuse me -- upper
14 right-hand corner, as you will recollect, I
15 called out 4230?

16 A. Yes.

17 Q. So that's the number we go by.
18 And then it will be point whatever page number
19 it is.

20 A. Okay.

21 Q. So if you go to .16, that will be
22 page 16 that I'm referring to. Okay?

23 And all the documents will be
24 marked the same way, just for ease for -- you

1 Q. So let's first look at -- well,
2 now let's move on from Washington to Florida.

3 And if you look at Number 2 there
4 on the immediate suspension order.

5 Do you see that?

6 A. I see it.

7 Q. Do you see where it says "From
8 August 2005 to October 2007 ..."

9 Can you continue.

10 A. "... Respondent distributed over
11 8,000,000 dosage units of combination
12 hydrocodone products to customers that it knew
13 or should have known were diverting hydrocodone
14 into the other -- into other than legitimate
15 medical, scientific, and industrial channels."

16 Q. Did you do anything to determine
17 whether that was an accurate statement or not?

18 Did you do anything to verify
19 whether the DEA was wrong?

20 MR. PYSER: Object to form.

21 A. I spent no time on that.

22 Q. You didn't worry about that?

23 A. I worried about what we had been
24 suspended for and what we needed to do to have

1 the system in place that Cardinal would be able
2 to serve our customers and we would be able to
3 meet the requirements of DEA.

4 Q. So this is what you were suspended
5 for --

6 A. I understand you.

7 Q. -- dumping 8 million dosage units
8 to drugstores and pharmacies that Cardinal knew
9 or should have known were being diverted?

10 MR. PYSER: Object to form.

11 Q. Right? That's what it says.

12 A. That's the accusation.

13 Q. Okay. Let's go to page 30 of the
14 document. I want to take a quick look at the
15 Texas distribution, the Texas -- Stafford,
16 Texas, show cause order.

17 Did you get there, Mr. Hartman?

18 A. Yes.

19 Q. Okay. And this is a show cause
20 order that we mentioned earlier for Texas, isn't
21 that right? The Stafford distribution center?

22 A. Yes.

23 Q. And when was it issued?

24 A. January 30, 2008.

1 Q. This is during your time frame
2 heading up this division; you're in this role
3 full time now, right?

4 A. I had been there six weeks.

5 Q. Exactly. So let's go down --
6 let's see. Let's go down to page 31. On
7 paragraph 7, this is from January of 2007
8 through September 11, 2007. "Registrant
9 distributed approximately 1.385" -- well, excuse
10 me. "1,381,500 dosage units of hydrocodone to
11 Richmond Pharmacy, or approximately 160 [sic]
12 dosage units each month."

13 Does that cause you any concern,
14 that a distribution center under your watch was
15 making those type of distributions to a single
16 pharmacy?

17 MR. PYSER: Object to form.

18 A. What I spent my time on was not
19 trying to refute or change or fight with the DEA
20 about these accusations.

21 Q. Yes, sir.

22 A. I spent all of my time on, what do
23 we need to do to improve our system and
24 practices and training and anything else we

1 needed to do in order to get our licenses back,
2 serve our customers, and do what the DEA said we
3 needed to do.

4 Q. And you made that abundantly
5 clear. But my question is, does this type of
6 distribution pattern cause you any concern as
7 the head of the regulatory department?

8 A. I didn't spend time looking at it.
9 I had a team that was now investigating. With
10 our new practices, we were getting ready to
11 put -- as we got them in place, and we -- it
12 took some time. It wasn't that we had it day
13 one. To look at these kind of issues and what
14 were the practices, what are the issues, what
15 are -- what is being said here, what is our
16 performance around this.

17 I didn't spend time on trying to
18 figure out what's right or what went wrong. I
19 spent my time on the process and the -- and the
20 system, using my subject matter experts to look
21 at these issues.

22 Q. Again, my question, you're in this
23 role for approximately three years, right? End
24 of 2007 to 2010?

1 Q. I mean, you can't do your job if
2 you don't know what you have to comply with, can
3 you?

4 A. That's right.

5 Q. Not very well at least, right?

6 A. I would say that's right.

7 Q. Okay. So explain to the jury what
8 your understanding was of Cardinal's obligations
9 under the Controlled Substances Act?

10 MR. PYSER: Same objection.

11 A. We were required to have a
12 suspicious order monitoring system, and we were
13 to have reported suspicious orders to the DEA.
14 I don't think that's a quote of the regulation.

15 Q. All right. So you're saying your
16 obligations under the Controlled Substances Act
17 was suspicious order monitoring system, that one
18 had to be created, implemented, and utilized by
19 Cardinal during this time frame, correct?

20 A. Cardinal was to have -- as a
21 distributor, to be licensed by the DEA, had to
22 have a suspicious order monitoring system.

23 Q. Now, do you know when you came
24 into your position in the end of 2007, December,

1 Okay? Are you understanding me right now?

2 A. Understanding.

3 Q. Okay. I'm asking you, was this
4 regulation actually in place and required of
5 Cardinal when you came in in December of 2007,
6 or was this something enacted by the government
7 after that point?

8 A. Is that the same question you've
9 been asking me?

10 Q. Yes, sir.

11 A. So you're asking me if the
12 Controlled Substances Act was in place?

13 Q. I'm asking you if that
14 regulation -- if that requirement, which you
15 testified to just now, was already in place when
16 you came into the position in December of 2007,
17 or was it a new requirement that was passed
18 sometime after you came into that position?

19 A. The Controlled Substances Act had
20 been in place for a long time.

21 Q. Do you know how long? Because you
22 testified earlier things had changed, and I want
23 to try to sort this out.

24 A. Back in the '70s, I believe, is

1 when it was first passed.

2 Q. So you believe this requirement
3 was in place since the 1970s?

4 A. I think so.

5 Q. Now, you mentioned operating a
6 system and then you mentioned another
7 requirement. What was that other requirement
8 that you believe was in place when you came into
9 this role?

10 A. To report suspicious orders to the
11 DEA.

12 Q. And you and I can agree, can we
13 not, those are two different requirements, one
14 is to have a system in place and operate that
15 system; the other is actually to report things,
16 suspicious orders, to the DEA, right?

17 A. I agree with that.

18 Q. Okay. Now, this report suspicious
19 orders to the DEA, when did -- was this
20 requirement already in place when you came into
21 the role, or was this something new after you
22 came into the role?

23 A. I'm not clear on whether you're
24 asking me if the Controlled Substances Act was

1 in place, or if you're asking me specifically
2 about Cardinal. Which are you asking me?

3 Q. I'm asking whether the regulation
4 was in place.

5 A. The regulation was in place.

6 Q. And do you know how long that
7 regulation had been in place?

8 A. I believe it's all part of the
9 original Controlled Substances Act, so I presume
10 from its inception.

11 Q. So 1970s again, right?

12 A. Yes.

13 Q. So you believe Cardinal had the
14 obligation to have a suspicious order monitoring
15 system and, therefore, to report suspicious
16 orders to the DEA since the 1970s, right?

17 MR. PYSER: Object to form. Calls
18 for a legal conclusion.

19 A. Yes.

20 Q. Okay. Now -- sorry.

21 Do you know whether there was
22 any -- well, let me ask, just to make sure we're
23 complete. Were there any other requirements
24 that you're aware of related to the Controlled

1 Substances Act or anything else related to
2 anti-diversion?

3 A. Related to the Controlled
4 Substances Act, the regulation. Those were the
5 two elements of it --

6 Q. Okay.

7 A. -- as I understand it.

8 Q. Now, do you agree or disagree that
9 there was a U.S. Code that required Cardinal to
10 maintain effective controls against diversion of
11 particular controlled substances into other than
12 legitimate medical, scientific, and industrial
13 channels?

14 A. It sounds right. I'd need to see
15 the document, but I think you're reading from
16 it.

17 Q. Well, we're going to show you the
18 document. Don't worry about that.

19 4916, please.

20 Have you ever looked at the
21 Controlled Substances Act, Mr. Hartman?

22 A. Yes.

23 Q. When did you do that?

24 A. I don't recall when, but as I

1 stepped into the role, I probably would have
2 looked at this act so -- to see what it was that
3 we were supposed to abide by.

4 Q. So when you say "I probably would
5 have," that's different than yes.

6 A. I don't recall. It's ten years
7 ago when I did --

8 Q. Okay.

9 A. -- or didn't. My -- I answered
10 your question in that I did, certainly looked at
11 it.

12 Q. Okay. And so this is portions of
13 the Controlled Substances Act. As you know,
14 it's multiple pages and a little lengthy, right?

15 Is that correct, or do you
16 remember?

17 A. No. I remember the act to be this
18 regulation in front of me or the pieces that we
19 focused on.

20 Q. Okay. So the portion in front of
21 you is from the United States Congress.

22 Do you see that seal there?

23 MR. PYSER: Object to form.

24 Q. Do you see that?

1 MR. PYSER: That was not a
2 speaking objection. I was explaining
3 the basis for my objection when you
4 misstate evidence.

5 MR. FULLER: Okay.

6 MR. PYSER: Continue, and I will
7 abide by the deposition protocol.

8 MR. FULLER: The order of the
9 Court is only form objections, and if I
10 want a clarification as to what the form
11 objection is, I will certainly ask.

12 MR. PYSER: Continue your
13 examination.

14 MR. FULLER: But until I do so, I
15 would ask you to refrain from the
16 speaking objections. I appreciate it.
17 Thank you.

18 BY MR. FULLER:

19 Q. Again, Mr. Hartman, I apologize
20 for that.

21 This U.S. Code requires that the
22 registrant maintain effective controls against
23 diversion, right?

24 MR. PYSER: Object to form.

1 A. That's what it says.

2 Q. We have to try to prevent
3 diversion. Isn't that the idea that you get
4 from the code?

5 A. That's what it says.

6 Q. That should be what everyone tries
7 to do, isn't it, or shouldn't it be?

8 MR. PYSER: Object to form.

9 A. I agree with preventing diversion.

10 Q. Okay. So not only do we --
11 according to what you said, we have to report,
12 we also have to try to prevent diversion,
13 correct?

14 A. Yes.

15 Q. And if we are shipping orders that
16 we know are suspicious or are likely to be
17 diverted, you would agree that we'd be breaking
18 this law?

19 MR. PYSER: Object to form. Calls
20 for a legal conclusion.

21 A. I'm sorry, the question one more
22 time. If we're --

23 Q. Sure.

24 If we're shipping orders that we

1 know are suspicious or are likely to be
2 diverted, then we're not complying with this
3 regulation?

4 MR. FULLER: Object to form. Same
5 objection.

6 Q. Correct?

7 A. I agree with that.

8 Q. Okay. So that's the U.S. Code.
9 We've talked about that. That's the Controlled
10 Substances Act. So let's move to 4916 -- or,
11 no, 4915.

12 THE VIDEOGRAPHER: Counsel, your
13 mic fell off.

14 - - -

15 (Cardinal-Hartman Exhibit 4 marked.)

16 - - -

17 BY MR. FULLER:

18 Q. So you understand the difference,
19 Mr. Hartman, this is a C.F.R., Code of Federal
20 Regulations, not enacted by Congress, but
21 enacted by an agency given the authority to
22 institute regulations. Okay?

23 A. Yes.

24 Q. Okay.

1 Q. We'll see. And here's the thing,
2 Mr. Hartman, because Cardinal's entrusted with
3 dealing with what has been labeled and
4 legislatively enacted as dangerous drugs.

5 You're aware of that, right?
6 Control IIs are --

7 MR. PYSER: Object to form.

8 Q. -- by definition dangerous drugs.
9 You're aware of that, correct?

10 A. Yes.

11 Q. This is not a place to skimp. You
12 would agree with that? Regulatory needs to be
13 beefed up so they can do the job they need to do
14 in compliance with the regulations we talked
15 about earlier.

16 We can both agree on that as well,
17 correct?

18 MR. PYSER: Object to form.

19 A. Well, the only -- the only thing I
20 agree with is this is a document that came out
21 in a major transformation from one of the
22 functions about, we need more money, we need
23 more resources. And the way to do that is to
24 highlight things like you're seeing right here,

1 Q. We also have -- let's see.

2 "Relocation for new director."

3 Do you see that second one?

4 A. I do.

5 Q. So this budget includes adding
6 those new employees in that they're requesting,
7 correct?

8 A. Yes, looks like that.

9 Q. What -- according to this, what is
10 the ask from compliance for 2007 fiscal year?

11 A. Are you asking me what this budget
12 was asking for?

13 Q. Yes, sir.

14 A. It appears to be \$997,000.

15 Q. So less than a million dollars is
16 what compliance is asking for for their entire
17 corporate department, correct?

18 A. Well, I mean, we tend to --

19 MR. PYSER: Object to form.

20 A. We tend to round. I mean, a
21 million dollars would probably be --

22 Q. We'll say a million dollars. Fair
23 enough?

24 A. Okay. Let's say that.

1 Q. Okay. A million dollars.

2 Now, you know that shortly after
3 this, you prepared a PowerPoint presentation
4 which represents that Cardinal was making,
5 generating revenue of \$87 billion, correct?

6 A. Ask me that again. Did you say I?

7 Q. Yes. Let's back up.

8 You know that Cardinal generates
9 revenue in the billions of dollars, correct?

10 A. Yes.

11 Q. And if documents indicated that
12 revenue was around \$87 billion, you wouldn't
13 have any reason to dispute that, would you?

14 A. No.

15 Q. Do you know what percentage a
16 million dollars makes of 87 billion?

17 A. Well, I'd need to do the math, but
18 it's a -- it's a small percentage.

19 Q. A very small fraction of a
20 percentage point, right?

21 A. That's what it is.

22 Q. How does that -- and let me ask.

23 Do you have any idea what the
24 sales team's budget was?

1 A. I have no idea.

2 Q. So Mr. Lancot -- do you know
3 Mr. Lancot?

4 A. It doesn't ring a bell.

5 Q. Regional sales manager for the
6 central United States?

7 A. I don't recall him. I might know
8 him. I might have met him. I don't recall him.

9 Q. So you -- he testified that he had
10 a sales force of over 100 persons.

11 A. Okay.

12 Q. For the center of the United
13 States.

14 A. Okay.

15 Q. And that there was an east and a
16 west.

17 Fair to say sales budget is going
18 to be far in excess of a million dollars, isn't
19 it?

20 MR. PYSER: Object to form.

21 Q. Just based on the number of
22 employees alone.

23 A. Yes.

24 Q. Without question, right?

1 A. Yes.

2 Q. This budget, if you were coming in
3 during this time frame, wouldn't be sufficient
4 for you, would it?

5 MR. PYSER: Object to form. Calls
6 for speculation.

7 A. I don't know. I wasn't there. I
8 wasn't in the department.

9 Q. Well, you --

10 A. When I took it over, I've already
11 told you what I did.

12 Q. And let's back up.

13 You were there at Cardinal during
14 this time?

15 A. I was, yes.

16 Q. You just weren't in the regulatory
17 or compliance department?

18 A. That's right.

19 Q. So let's go to what you did do.
20 Let's go to 3874.

21 - - -

22 (Cardinal-Hartman Exhibit 10 marked.)

23 - - -

24

1 coming into this department, right?

2 A. It looks like it.

3 Q. And is, again, that because you
4 felt that was what was necessary to be able to
5 monitor compliance through all these
6 distribution centers?

7 A. Yeah. As I came into role, I
8 was -- and understanding as I got into role
9 these immediate suspensions, what we needed to
10 do, the changes that had come from the DEA and
11 what we needed to do in order to accommodate
12 those changes, yes, I was out to staff this with
13 more people.

14 Q. Now, we talked about the situation
15 on changes, and we're not going to revisit that
16 because I think we made that clear. But you
17 were envisioning, when you came into this
18 department, fixing it to the point that you
19 could feel comfortable that proper compliance
20 was being maintained; is that right?

21 A. I came into the role under some
22 pretty tenuous circumstances that Cardinal had
23 been issued the suspensions.

24 Q. Three suspensions, right?

1 A. It was three suspensions.

2 Q. And another Order to Show Cause?

3 A. That's right.

4 Q. And it was voluntarily given up?

5 A. In January of 2008 --

6 Q. And then a fine as well?

7 A. Houston --

8 MR. PYSER: Counsel, let him
9 finish his answer before you ask another
10 question.

11 MR. FULLER: Sure. I apologize.

12 BY MR. FULLER:

13 Q. Go ahead.

14 A. Okay. What -- the fine you're
15 talking about is from when? What fine were you
16 mentioning just now?

17 Q. The DEA investigation related to
18 the suspensions.

19 A. So later in 2008, when we had a
20 settlement? Okay. Let me come back to -- I'm
21 sorry. What was I commenting on? You threw me
22 on the fine.

23 Q. No, no, no. You're fine. I
24 apologize. It's my fault.

1 A. Yes.

2 Q. "Regulatory oversight for
3 Cardinal's 27 pharmaceuticals and 50 medical
4 distribution centers nationally."

5 Across the entire country, right?

6 A. Yes.

7 Q. And let's talk about that. When
8 you were building out this new system, which,
9 obviously, you had accomplished some by the time
10 we get to this presentation, your system was
11 being devised to be applied across the entire
12 country, wasn't it?

13 A. Yes.

14 Q. All distribution centers?

15 A. Yes.

16 Q. It was a systemic application
17 from, like we talked about earlier, Auburn,
18 Washington, all the way down to Lakeland
19 Florida?

20 A. Yes.

21 Q. And you wanted that because you
22 wanted everybody operating under the same rules?

23 A. Yes.

24 Q. Everybody performing the functions

1 the same way?

2 A. Consistency and commonality is
3 what we were after.

4 Q. Absolutely.

5 Let's go to page 5.

6 This is entitled "Supply Chain
7 Integrity."

8 Do you see that?

9 A. Yes.

10 Q. And there you go again. "Supply
11 Chain Integrity is a holistic approach to the
12 supply chain ecosystem of an industry aimed at
13 creating a safe and secure supply chain from
14 manufacturer to end user."

15 And let's talk about that just for
16 a second, because this supply chain that you're
17 working with is what is known as a "closed
18 system," isn't it?

19 A. I think that's the term we used,
20 yes.

21 Q. It's also the term the legislature
22 used in creating the CSA as well. Okay?

23 But do you know or have an
24 understanding what that means?

1 the top?

2 A. Yes. I see that.

3 Q. This is supposed to be secret,
4 right?

5 MR. PYSER: Object to form.

6 Q. Somebody indicated it was supposed
7 to be confidential?

8 A. I think your term "secret" is a
9 wholly different -- you know, I think you
10 commented on my military background. Secret is
11 a completely different category.

12 Q. Confidential clearance versus
13 confidential clearance?

14 A. Confidential -- well,
15 "confidential" just means that we keep it
16 in-house to our -- whoever needs to see it. It
17 would be, I guess, my descriptions, I don't
18 recall. I don't know. But that's how I saw
19 confidential. You just don't leave them around.
20 You don't hand them out to everybody. It's who
21 needs to see it.

22 Q. Fair enough.

23 And this is regulatory compliance
24 review, June 2006, pharmaceutical distribution,

1 Birmingham, Alabama, right?

2 A. Okay.

3 Q. You guys had a distribution
4 center, or do have, in Birmingham, Alabama,
5 right?

6 A. Yes, we do.

7 Q. And if you'll turn to the section
8 on "Significant Issues" on page 4.

9 Do you have that in front of you?

10 A. Yes.

11 Q. Have you seen these type of
12 reports before? I would assume in your
13 regulatory department you would review these
14 regularly?

15 A. And in my early career jobs on the
16 pharma side, I certainly saw them.

17 Q. Fair enough.

18 "Significant Issues, DEA." And go
19 down to where it says "There is no system."

20 Do you see that?

21 "There is no system to determine
22 excessive or suspicious ordering by customers of
23 controlled substance products."

24 A. Yes, I see it.

1 A. Headquarters was providing reports
2 to the DEA on a monthly basis that we were
3 required to report. And the DEA agreed with
4 that. They told us we were doing a good job.
5 That's what I know about the prior system. I
6 don't know a lot about it. Others will be able
7 to tell you much more, but that's what I know.

8 Q. So, Mr. Hartman, you testified
9 earlier that the regulation required -- the
10 regulation and statute required three things.
11 One, to operate a suspicious order monitoring
12 system, right?

13 A. Yes.

14 Q. This says Birmingham, as a
15 registrant, has no suspicious ordering system,
16 doesn't it? I mean, isn't that what it says
17 here?

18 A. That's what the document --

19 Q. No system?

20 A. -- says.

21 Q. So that means they're breaking the
22 law.

23 A. I don't know that -- I don't know
24 if that -- if that included or didn't include

1 noses."

2 This is coming from somebody
3 that's working in Lakeland during the time that
4 Lakeland got its license suspended, right?

5 That's this time frame, isn't it?

6 A. Yes.

7 Q. And they have concerns about,
8 apparently, the system that was in place back
9 then relying on pickers and checkers. That's
10 what their voicing, correct?

11 MR. PYSER: Object to form.

12 Misstates evidence.

13 A. It looks like he's calling out
14 some inefficiencies that he felt needed to be
15 worked on.

16 Q. Now, you know that the policy and
17 procedure relied on pickers and checkers to
18 identify excessive orders in the distribution
19 centers, correct?

20 A. That's my recollection, yes.

21 Q. Now, so these pickers and
22 checkers, these people that are policing our
23 excessive orders in the distribution centers, do
24 you know what kind of qualifications that these

1 pickers would have to have, these people that we
2 have policing our highly dangerous controlled
3 substances? What kind of -- I mean, do they
4 have DEA backgrounds; do you know?

5 MR. PYSER: Object to form.

6 A. Not that I'm aware of, unless
7 somebody just hired in that happened to have
8 that.

9 Q. Do you know if they have any sort
10 of law enforcement experience?

11 A. Not that I'm aware of.

12 Q. Do you know if they have any sort
13 of diversion experience?

14 A. Not that I'm aware of.

15 Q. And these are the -- at least part
16 of the system that Cardinal was relying on on
17 these pickers is policemen, basically, to pick
18 up on excessive orders, at least according to
19 this person.

20 MR. FULLER: Let's go to 3879.

21 MR. PYSER: Object to form.

22 - - -

23 (Cardinal-Hartman Exhibit 17 marked.)

24 - - -

1 product according to the laws and regulations
2 for handling controlled substances."

3 And let's go down to the bottom
4 under "Education and/or Experience" and see what
5 Cardinal Health required for these policemen.

6 Tell the jury what Cardinal's
7 requirements were to be a policeman for the
8 controlled substances or for people who are
9 supposed to be policing excessive orders at all
10 the distribution centers across the country.

11 MR. PYSER: Object to form.

12 A. "Qualifications. To perform this
13 job successfully, an individual must be able to
14 perform each essential duty satisfactorily. The
15 requirement listed below are representative of
16 knowledge, skill, and/or ability required. The
17 reasonable accommodations may be made to enable
18 individuals with disabilities to perform the
19 essential functions."

20 Q. And what's the education and
21 experience requirement that Cardinal Health has
22 for these employees?

23 A. High school diploma or equivalent,
24 warehousing or distribution experience

1 preferred.

2 Q. A high school diploma or
3 equivalent. No special training on diversion,
4 at least according to this, right?

5 A. This is an old logo. I can't even
6 imagine the time frame this was from. This is
7 pretty far back. So I have no idea, first of
8 all, if this is what exists today or later.
9 I -- this is an old -- this is a very old
10 document.

11 Q. Mr. Hartman, it was part of what
12 the lawyers and Cardinal produced to us in this
13 regard. This is what I have to go off of.

14 A. So there's not a time frame on
15 this?

16 Q. It was produced in 2007 to the
17 DEA. You can tell that by the Bates number.

18 MR. PYSER: If we're going to be
19 interpreting that, that means it's from
20 sometime before 2007.

21 Q. So, Mr. Hartman, again, there's no
22 regulatory training or education required for
23 this position, right?

24 MR. PYSER: Object to form.

1 distribution centers with concerns about the way
2 the system is operating. You get that, right?

3 Do you understand that that's a
4 concern that this individual has and he's trying
5 to bring it to someone's attention?

6 A. The question is?

7 Q. Do you get that this person, in
8 Exhibit 15, is trying to bring to the attention
9 of someone that there's problems with the
10 system, that --

11 A. That could exist.

12 Q. -- many, many, more pills could be
13 going out right underneath our own noses?

14 MR. PYSER: Object to form.

15 A. That could exist.

16 Q. Yes. And Florida's license was
17 suspended at this time because of failure to
18 comply with suspicious order reporting
19 requirements, right?

20 MR. PYSER: Object to form.

21 A. During this time frame, that's
22 correct.

23 Q. Clearly, it couldn't exist or
24 maybe could exist. It did exist?

1 A. It appears he's calling out some
2 situations and issues that he sees in his
3 distribution center that he's looking, again, to
4 get some program and some strategies in place to
5 resolve.

6 Q. And his concern is with the
7 pickers being the policemen to identify
8 excessive orders.

9 Let's read what he says. He says,
10 "The manual process we perform now with the
11 discovery of suspected excessive purchases being
12 left up to keyer notifying me or a picker or
13 double-checker or QCer questioning the amount of
14 the process seems to leave ample opportunity to
15 failure."

16 Right? Is that how it reads?

17 A. It appears that he's calling out,
18 as an individual, a person -- a issue that he
19 sees of multiple people involved, and he's
20 saying that presents a problem. I don't know if
21 it is or isn't.

22 Q. Well, we know --

23 A. And I, quite frankly, don't think
24 that we should stop from hiring a high school

1 Q. So, Mr. Hartman, tell the jury
2 whether the law requires Cardinal to have a
3 sufficient system to spot suspicious orders --
4 suspicious order in place.

5 MR. PYSER: Object to form.

6 A. I don't know that that's an exact
7 quote, but I think that's the law that we abide
8 by.

9 Q. And you agree that Cardinal has an
10 obligation to prevent diversion the best they
11 can, right?

12 MR. PYSER: Object to form.

13 A. Cardinal Health has a
14 responsibility to identify suspicious orders, to
15 monitor those, to have a program in place, to
16 make its best evaluation, and if they determine
17 a suspicious order, to report that to the DEA so
18 the DEA has all the information that we believe
19 is relevant to a potential problem.

20 Q. And is Cardinal still able to ship
21 that suspicious order?

22 A. Under my time frame, we were not.
23 The rules had changed.

24 Q. And you believe prior to, you

1 better analytics, a better IT system for us to
2 work with, an opportunity for us to expand on
3 Know Your Colleagues -- Know Your Customer, the
4 training for that, as well as I expanded the
5 team and investigators.

6 Q. And my question was a simple one.
7 You say that that's the part that changed, and
8 you're referring to the shipping requirement,
9 right, or the not shipping requirement?

10 A. How I recall it in that time
11 period.

12 Q. Right. And so it's your
13 understanding that prior to that change, you
14 could ship a suspicious order, correct, or do
15 you know?

16 MR. PYSER: Object to form.

17 A. Sorry.

18 MR. PYSER: Go ahead.

19 A. The only part that I'm aware of --
20 or I think what was going on is that our team
21 felt they were abiding by the DEA guidelines,
22 which meant that they aggregated data on a
23 monthly basis. So when you asked me, "Can you
24 ship a suspicious order?" the reality is, is

1 that the orders were already out of the
2 distribution center as the reports went into the
3 DEA.

4 That's what I recall the team
5 telling me about how it was operating, and I
6 come into role and I put down some pretty strong
7 measures for us to take the DEA's guidance and
8 to move forward.

9 Q. And let me just make sure I
10 understand. That's because the orders were
11 shipped the next day after the order was made,
12 generally speaking, right?

13 A. Generally, that's right.

14 Q. And as you described earlier, it
15 was to be able to get the medications, whatever
16 it may be, to the drugstore as quickly as
17 possible to keep down inventory and all that
18 kind of stuff that we talked about earlier,
19 correct?

20 A. This is an efficient supply chain.
21 We're trying to take costs out of the system,
22 certainly for -- for the pharmacies who, if --
23 before these supply chains were operated in that
24 capacity, they were getting deliveries maybe one

1 or two times a week. You had to carry a lot
2 more inventory, much higher costs.

3 Q. Sure.

4 A. Costs are passed on.

5 Q. Sure.

6 A. So you work hard to get a very
7 efficient system in place.

8 Q. So the way the system was working
9 when you came in, is that the suspicious orders
10 reports, this monthly reporting was done at the
11 end of the month, or, I'm assuming, the
12 beginning of the next month, whenever it was
13 compiled, right?

14 A. That's what I -- that's how I
15 recall it being described to me. Again, brief
16 detail. As I told you earlier, I didn't spend a
17 lot of time trying to go backwards.

18 Q. You were looking forward?

19 A. I put a stake in the ground to go
20 forward. What is the DEA requiring us? We
21 tried to call them. We tried to talk to them.
22 We tried to understand, what is it we need to
23 do? It's changed.

24 Q. And because the report is not

1 going out until the end of the month, all the
2 month -- orders made during the month were
3 already gone?

4 A. That's my understanding. Well,
5 the orders were gone, for sure.

6 Q. Yeah.

7 A. My understanding was the report
8 went in at the end of the month.

9 Q. Sure.

10 THE WITNESS: Can I ask if we take
11 just a really quick break?

12 MR. FULLER: Oh, no, no. Fine.
13 Absolutely. We've been going a while.

14 THE VIDEOGRAPHER: The time is now
15 3:35. We are going off the record.

16 (Recess taken.)

17 THE VIDEOGRAPHER: The time is now
18 3:55. Back on the record.

19 BY MR. FULLER:

20 Q. Mr. Hartman, we bounced off your
21 presentation, but let's go back to your
22 presentation on page 6.

23 A. 13?

24 MR. PYSER: It's the one with 3892

1 are one of the safety rules we have in our
2 country to try to keep people safe on the
3 street, fair?

4 A. Yes.

5 Q. The statutory obligations that we
6 looked at earlier are the safety rules to try to
7 keep us safe when we're dealing with controlled
8 substances. Can we agree with that?

9 MR. PYSER: Object to form.

10 A. Oh, I understand that.

11 Q. And that's part of what you tried
12 to do at Cardinal, is ensure compliance with
13 those, correct?

14 A. No. I did do that. I didn't try.

15 MR. FULLER: So let's pull up the
16 Congressional testimony, clip 6.

17 (Video started.)

18 "MS. WALTERS: Now, when
19 Cardinal began setting
20 threshold limits for
21 pharmacies in 2008, the
22 company set family
23 discount's hydrocodone
24 threshold at 27,000 doses

1 a month. In a little over
2 a year, Cardinal adjusted
3 the pharmacy's threshold 14
4 times. And by August 2009,
5 it was cleared to receive
6 110,000 hydrocodone pills a
7 month. The pharmacy's
8 threshold for hydrocodone
9 reached a peak of 150,000
10 dosages a month in
11 January 2010, a level it
12 remained at for a year and
13 a half before Cardinal
14 officials reviewed and
15 reduced it.

16 "Mr. Barrett, when a
17 pharmacy goes over its
18 monthly drug threshold,
19 does Cardinal inquire about
20 the reason for the higher
21 drug order?

22 "MR. BARRETT: Thank you,
23 Congressman.

24 "Today if an order

1 reaches its threshold, it
2 simply stops. So the process
3 is, the threshold is set, and
4 the threshold is set based
5 on a number of factors; the
6 size of the community it
7 serves -- not just the
8 population but the community
9 it serves. Other factors.
10 Does it serve a hospice
11 center or a surgical center,
12 et cetera.

13 "If an order reaches
14 that threshold, that limit,
15 it simply stops.

16 "MS. WALTERS: But in the
17 past, did it -- did it
18 question it before today's?

19 "MR. BARRETT: So as I look
20 back at some of the historical
21 documents, I think the
22 thresholds probably should
23 have been set with a different
24 set of eyes. I've mentioned

1 this notion of asking
2 different questions, and
3 I think today would probably
4 set those quite differently.

5 "But I think at the time
6 of those pharmacies you
7 referred to, thresholds probably
8 should have been adjusted down
9 more quickly.

10 "MS. WALTERS: Did they -- did
11 Cardinal make an assessment
12 as to whether the explanation
13 for increasing the threshold
14 made sense and verified it in
15 any way?

16 "MR. BARRETT: It's hard for
17 me to answer that fully.
18 Again, this is part of the
19 history. I have no reason
20 to question the good intent
21 of those doing that kind of
22 assessment. They were
23 professionals.

24 "I think they were

1 identify, report, don't ship?

2 A. That's my understanding.

3 Q. Okay. So, again, during this
4 period of time when we go from 300,000 oxies --
5 316,000 oxies in 1996 to 7,200,000 in 2002, that
6 was during the period -- during the period of
7 time that Cardinal was identifying, reporting,
8 and shipping?

9 MR. PYSER: Object to form.

10 A. Again, I'm -- I don't have a -- I
11 don't have a clear understanding of that prior
12 system. As I took over, the team that I had
13 felt that they were meeting the obligations. So
14 I'm just going to say I don't know.

15 Q. But you knew that the change that
16 they explained to you --

17 A. In December of 2007.

18 Q. -- is that "we can't ship
19 anymore"?

20 A. That, I understood.

21 Q. Okay. Let's go to page 14, if we
22 can. And, sir, this is in regards to the -- how
23 long sort of this epidemic has been building.

24 And the report to Congress here

1 says, "Media reports of OxyContin abuse and
2 diversion began to surface in 2000. These
3 were -- reports first appeared in rural areas of
4 some states, generally in the Appalachian
5 region, continued to spread to other rural areas
6 and larger cities in several states. Rural
7 communities in Maine, Kentucky, Ohio,
8 Pennsylvania, Virginia, and West Virginia were
9 reportedly being devastated by the abuse and
10 diversion of OxyContin."

11 And then if we go on to the next
12 page, sir, about halfway down, that first
13 paragraph, "The media also reported on deaths
14 due to OxyContin. For example, a newspaper's
15 investigation of autopsy reports involving
16 oxycodone-related deaths found that OxyContin
17 had been involved in over 200 overdose deaths in
18 Florida since 2000."

19 Were you aware, sir, that there
20 were certain parts of the country that were
21 being affected more significantly than other
22 parts of the country when it came to the opioid
23 epidemic?

24 A. During what time period?

1 Q. Any time period.

2 A. At this time period that you're
3 reading from, I was not.

4 Q. When did you become aware?

[REDACTED]
 [REDACTED]

7 I started to become much more informed in
8 understanding this problem in December of 2007.

[REDACTED] if we can, to the

22 time frame just before December of 2007.

23 MS. QUEZON: And it's P14195,

24 please. Exhibit 22.

1 improved our prior systems and reported
2 suspicious orders under that.

3 MS. QUEZON: Let's go to 4699
4 please. Theirs is prettier than mine.

5 BY MS. QUEZON:

6 Q. I'll give you a minute to take a
7 look at it.

8 Are you familiar with this type of
9 summary report?

10 A. I recall this, seeing this.

11 Q. Okay. And at the top there, it
12 says, "February 2009 Summary."

13 Do you see that?

14 A. Yes.

15 Q. And it looks like that these are
16 different suspicious order monitoring events per
17 distribution center, different types of summary
18 information for 2008 from March of 2008 to
19 February of 2009, correct?

20 A. It looks like that.

21 Q. All right. Let's go to page 2
22 of 3. And what I want to look at is that -- is
23 that table at the right top corner, "Suspicious
24 orders reported to the DEA."

1 And this is throughout all of
2 Cardinal, correct?

3 A. If that's what the report is
4 about. I don't recall what -- I suspect it is.

5 Q. All right. And do you see, sir,
6 that in August of 2008, September of 2008, and
7 October of 2008, there were zero suspicious
8 orders reported?

9 A. Yes. I see that.

10 Q. A couple of months -- let's see,
11 in June there were two throughout the entire
12 United States. In December, there were two.
13 And in February there were two.

14 Do you see that?

15 A. I see that.

16 MS. QUEZON: Okay. Let's go to --
17 let's go to 3842, please.

18 - - -

19 (Cardinal-Hartman Exhibits 24 - 26 marked.)

20 - - -

21 - - -

22 MS. QUEZON: Oh, I'm sorry. What
23 exhibit number are we on?

24 MS. SHIVERS: 3859 is

1 been done.

2 Q. Well, let's do it. And I picked
3 Illinois for a reason. Because Illinois is
4 pretty close geographically to Ohio, and
5 Illinois has a million more people in its
6 boundaries than Ohio does. But they're pretty
7 comparable when it comes to geography and to
8 population. If you can look with me in 2006.

9 MS. QUEZON: And if we can do
10 the -- let's do the PowerPoint.

11 All this is is just a
12 demonstrative aid of the actual numbers
13 here. If we can look in 2006 in
14 Illinois, there were 4,964,195 dosage
15 units of oxycodone shipped only by
16 Cardinal into Illinois. In that same
17 year, 67 million pills shipped into
18 Ohio.

19 Now, I understand this is during
20 the period of time when suspicious orders, at
21 least according to what you were told, were not
22 being halted. They -- that requirement was not
23 yet there. But let's keep looking.

24 In 2007, about 6 million pills

1 into Illinois, and into Ohio almost 73 million
2 pills with a population of a million fewer
3 people.

4 Did you know this was going on?

5 MR. PYSER: Object to form.

6 A. I personally became aware --

7 Q. Around 2007?

8 A. -- in December 2007.

9 Q. Well, let's go ahead and get
10 there.

11 In 2008, 6 million pills into
12 Illinois. 75 million pills -- 75.5 million
13 pills into Ohio. In 2009, about 7 million
14 pills. 85 million pills into Ohio.

15 Now, sir, if we -- if we go back
16 to our simple -- our simplified premise that the
17 more pills that had flooded into a community,
18 the higher the likelihood of abuse and
19 diversion, can you start to get a picture of why
20 Ohio suffered so much more greatly than other
21 places?

22 MR. PYSER: Object to form.

23 A. What I do know is my own narrative
24 about what's going on here, and it begins with

1 our government.

2 Q. Do you take any responsibility?

3 Any responsibility, sir?

4 MR. PYSER: Object to form.

5 Please let the witness answer the
6 question.

7 Q. This isn't the government putting
8 the pills into Ohio. This is your company.

9 MR. PYSER: Object to the form.

10 A. These pills -- these pills are
11 available because the DEA, who is the licensee,
12 sets the quotas for a distributor to fulfill
13 orders from licensed DEA pharmacies for
14 prescriptions written by licensed DEA doctors.
15 That's what I know at the time, other than my
16 head was down, banging away at trying to get my
17 company in a position that we had responded to
18 the DEA's immediate suspension orders, to get
19 our systems in place in response to those so
20 that we could get our licenses back, serve our
21 customers -- that's what I know.

22 Q. Mr. Hartman, had you known in
23 2007, had you done this analysis when you came
24 in, or 2008, and you knew that for a state with

1 a million fewer people, you were sending in ten
2 times the amount of oxycodone, would you have
3 done something differently?

4 MR. PYSER: Object to form.

5 A. I don't know.

6 MS. QUEZON: Can we total this?

7 BY MS. QUEZON:

8 Q. When all is said and done, sir,
9 Cardinal sent in to the State of Ohio
10 800 million pills, and into Illinois, with a
11 million more people in it, 76 million pills?

12 MR. PYSER: Object to form.

13 MS. QUEZON: Could we take just
14 about five minutes, and I may be just
15 about through.

16 THE VIDEOGRAPHER: The time is now
17 5:27. We're going off the record.

18 (Recess taken.)

19 THE VIDEOGRAPHER: The time is now
20 5:35. Back on the record.

21 BY MS. QUEZON:

22 Q. Mr. Hartman, I just have a couple
23 more questions.

24 First of all, and if it's for

1 BY MR. FULLER:

2 Q. Mr. Hartman, you've testified
3 repeatedly about these limiter reports, right,
4 that were submitted monthly?

5 A. Yes, I've commented on them.

6 Q. And you're aware, are you not,
7 that the limiter reports are only submitted for
8 those substances and entities that exceed their
9 limits, correct?

10 A. I don't recall exactly what these
11 reports were about prior to. I know what
12 reports were talked about, what the team
13 responded to to the DEA and were required to
14 submit. And then they did that on a monthly
15 basis, and it was at the end of the month that
16 those reports went in.

17 Q. And who at the DEA said that was
18 okay; do you know, or are you relying on your
19 people to tell you that?

20 A. My folks commented on that.

21 Q. So you have no knowledge of the
22 DEA approving that process, do you?

23 A. Prior to my time in role, I don't
24 have the conversations with the DEA. My

1 folks -- the people that worked for me at the
2 time did.

3 Q. Fair enough.

4 So, again, I guess my question is,
5 no one at the DEA ever told you that that was
6 acceptable?

7 MR. PYSER: Object to form.

8 A. Correct.

9 Q. And then -- and I apologize
10 because I missed the first one.

11 When you first came to Cardinal,
12 what was it that you were doing, you told me
13 Pyser you were doing?

14 A. I was a regional vice president
15 for the Midwest region.

16 Q. How many people did you oversee?

17 A. Probably about 200, somewhere in
18 that range.

19 Q. And what was your budget?

20 A. Budget for?

21 Q. Your entire budget, the money you
22 had control of for the Midwest region.

23 A. I have -- I don't recall what the
24 budget was.